**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.356 OF 2005

Babu Jagannath Bhabad .. Appellant.
Vs.
Vithoba Ganpat Khairnar & Ors. .. Respondents.

WITH

SECOND APPEAL NO.744 OF 2005

Babu Jagannath Bhabad & Ors. .. Appellants.
Vs.
Vithoba Ganpat Khairnar & Ors. .. Respondents.

Mr.C.G.Gavnekar i/b Mr.A.D.Avhad for the appellants.

**CORAM : D.B.BHOSALE, J.**

**DATED : 14TH DECEMBER, 2006**

P.C.:

. Heard learned counsel for the appellants.

2. The concurrent findings recorded by the courts below are under challenge in the instant second appeal. The appellant filed a regular civil suit no.363 of 1989 seeking declaration and injunction and he was defendant in a suit no.298 of 1989 filed by the respondents for injunction simplicitor. The courts below have concurrently held that the defendants have rightly invoked the doctrine of part performance under section 53-A of the Transfer of Property Act and they are entitled to protection of

their possession of the suit property. Mr.Gavnekar, learned counsel for the appellants vehemently submitted that the doctrine of part performance is not available since the agreement itself, when was executed on 17.5.1971, was void since the permission was not obtained. It is not clear either from the judgment impugned in the present appeals or is made clear by the learned counsel for the appellants, under which provisions of law the permission was necessary and if it was necessary whether the appellants, as agreed in the agreement of sale, made any attempt to seek such permission. It appears that the trial Court did not go into this aspect to the extent it ought to have in view of the fact that this contention was not raised seriously before that Court. It may be noticed that in the memo of appeal, filed before the first appeal court, this ground was not raised at all. Therefore, now it is not open for the appellant to raise this contention in the second appeal. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact these appeals fail and are dismissed as such. At this stage Mr.Gavnekar, learned counsel for the

appellants seeks six weeks protection of their possession. Such prayer cannot be and need not be granted in view of the fact that there is clear finding recorded by the court below that the appellants are not in possession of the suit property and that there was no such protection granted, pending appeal, before the first appeal court. The prayer is rejected. The appeals are, accordingly, disposed of in aforesaid terms.

**(D.B.Bhosale, J.)**